Supreme Court, U.S.
FILED

01129

No.

In the

Supreme Court of the United States

PARKVIEW ASSOCIATES PARTNERSHIP,
CHAM NAGARAJ, SHUSHELLA NAGARAJ,
DAVID SIMPSON, And EDWARD SHEIB,

Petitioner,

v.

CITY OF LEBANON, and
CITY OF LEBANON ZONING
BOARD, HEARING BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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56 pp

QUESTIONS PRESENTED

I. Does the doctrine of claim preclusion prohibit a plaintiff from bringing a cause of action pursuant to federal law, in federal court, after properly preserving the federal cause of action, relative to fair housing discrimination, by filing the appropriate administrative complaints with the appropriate agencies, thus tolling the statute of limitations, when the federal claims for housing discrimination have not been fully or fairly litigated in the limited framework of a local zoning board of appeal and its state appellate proceedings, which limits the appellate review to a precursory examination of the zoning board hearing held below, while not providing a full and fair forum or opportunity to litigate its fair housing and related claims, where the 3rd circuit federal court of appeals had decide, in an earlier appeal in that case to the 3rd circuit, that the "rooker-felder" doctrine did not apply, and the argument in support of this writ does not involve an attempt to use the federal courts as an appellate court for an adverse state decision?

II. Whether petitioners were denied due process and equal protection of the laws relative to their dismissed federal claims, which were timely filed after a local zoning board refused, as a pretext, to grant petitioners a variance or building permit, to house mentally handicapped individuals, (the classic N.I.M.B.Y. syndrome-(Not In My Back Yard), where discovery proceedings clearly revealed the hearing officers were motivated by this exact fact, and, where the local zoning board and state appellate proceeding failed to provide the procedural and practical avenues to bring these issues for adjudication in the state court zoning appellate proceeding, since the state appellate proceedings only permitted limited review of the bare bones zoning hearing transcript.

III. Whether the presence of a garden variety zoning board hearing and its limited state appellate process, which do not provide for a full and fair opportunity to present the federal claims contained in petitioner's complaint, trump the federal statutes involved in these claims and result in the denial of equal access to the court to litigate the herein referred to federal claims–thus providing municipalities with"de facto" immunity from answering in federal court to claims based upon the advanced federal laws?

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit is reported at 225 F. 3d 321 and is reproduced in the appendix to this petition(App.) at 1a. The prior Opinion of the said Court of Appeals reversing an earlier Summary Judgment Motion granted by the trial court in favor of the defendant, relative to the ***Rooker-Felder Doctrine***, is also attached for purposes of reference with regards to the instant petition, at App. 1b.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on September 24, 2001. The Court of Appeals denied a petition of rehearing en banc on December 3, 2001. the jurisdiction of this court is invoked pursuant to 28 USC Sec. 12154(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

U.S. Constitution: Fourth Amendment
Fourth Amendment - Search and Seizure
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Constitution: Fifteenth Amendment
Fifteenth Amendment - Right of Citizens to Vote
Section. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
Section. 2. The Congress shall have power to enforce this article by appropriate legislation.

Fair Housing Amendments Act (FHAA), 42 U.S.C. Sections 3601-3631; Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sections 12101-12213; the Rehabilitation Act of 1973 (RHA), 29 U.S.C. Sections 701-796(1); and the Pennsylvania Human Relations Act (PHRA) 43 Pa. Cons. Stat. Ann. Sections 951-963.

STATEMENT OF THE CASE

Oakview Residential Care and Nursing Home located at all times relevant at 1407 Oak Street, Lebanon, was licensed by the Commonwealth of Pennsylvania for twenty-eight nursing care residents and twenty-two personal care residents when it closed on November 24, 1993. Parkview Associates had an agreement to purchase Oakview for four hundred thousand dollars ($400,000.00) on November 20, 1993, and obtained a zoning use permit from the City of Lebanon to operate a seventy bed personal care home on November 29, 1993, at that precise location.

On March 17, 1994, a neighborhood couple appealed the permit. The Lebanon Zoning Hearing Board accepted the appeal even though the sixty-day legal time limit for filing an appeal had already expired. The Zoning Hearing Board then held hearings on April 6, 1994 and April 13, 1994, and listened to comments from neighbors and testimony from the Appellants that depicted Parkview's proposed operation as one which would house people with mental disabilities, who would pose a threat to neighbors and cause a lowering of property values. On May 4, 1994 the Zoning Hearing Board rendered an oral decision revoking Parkview's permit. The written decision followed on May 18, 1994.

That decision, upheld in Common Pleas Court was appealed in the Commonwealth Court. That Court affirmed the Common Pleas Court's decision.

The above events are part of an earlier complaint filed with the Pennsylvania Human Relations Commission on September 14, 1994 (Docket numbers H-6491, H-6492, H-6550/P4434) and filed as a Title II ADA complaint with the

U.S. Justice Department on September 19, 1994 (no docket number has been assigned as of this writing.)

On September 7, 1994, Parkview again sought to operate its facility in accordance with licensing provisions, which were already in place for Oakview by way of applying for a zoning permit for that specific use at that time. The City of Lebanon, wrongfully denied Parkview's application for a Zoning use permit to utilize the former Oakview Residential Care and Nursing Home as a fifty bed personal care home.

Parkview applied for its permit showing a change of ownership. The Zoning Administrator changed the permit application to a request for fifty to fifty-three personal care beds and to indicate a change of use rather than just a change of ownership, and then denied the permit stating that a change from one non-conforming use to another would require a special exception. The Zoning Administrator arbitrarily determined that housing fifty personal care residents constituted a different use than housing twenty personal care and twenty-eight nursing care residents as was the case with Oakview.

The City of Lebanon has no ordinances to regulate the operation of personal care or nursing homes within its boundaries, and has historically deferred to State regulatory agencies in regards to number of occupants and/or type of disability. The City zoning ordinance contains no definition of a personal care or nursing home.

On September 14, 1994, Parkview Associates appealed the permit denial. A public hearing was held before the Lebanon Zoning Hearing Board on October 5, 1994. After again hearing biased comments from neighbors and references to the earlier permit revocation (two of the three zoning hearing board members participated in the earlier hearing and the third, Fred Folmer had excused himself from the earlier hearing), the Zoning Hearing Board upheld the permit denial rendering its decision immediately after hearing testimony. On pages 175 through 177 of the hearing transcript, the hearing board members agreed that Parkview had met seven of the eight requirements for the granting of a special exception, but failed to meet the eight, compatibility,

which is factually untrue. This purported reason is subterfuge to violate federal law.

The Board's decision that Parkview's use would be incompatible while Oakview's use was compatible was based on testimony by neighbors as to the type of residents which Parkview would or could have. The neighbors offered testimony (some of which can be seen on pages 138-139, 142, 161, 173, and 174 of the official transcript of the October 5, 1994 Zoning Hearing) that indicated Parkview's residents would have mental disabilities, would be younger and more mobile than Oakview's residents, and that without limitations on age and incapacities of residents (which the Board never attempted to impose, opting instead to affirm the permit denial) Parkview's use could destroy the character of Oakview and be incompatible with the neighborhood.

The Zoning Hearing Board rendered its written decision on November 14, 1994. In it, the Board concluded that an increase from twenty-two personal care residents to fifty personal care residents (ignoring the simultaneous deletion of twenty-eight nursing care beds), "would significantly change the character of the neighborhood. The proposed use would not be compatible with the neighborhood." This decision was appealed to the Court of Common Pleas, and later to the Commonwealth, wherein both courts affirmed the Board's conduct.

The City's actions have interfered with Parkview Associates' ability to purchase and operate a personal care home at 14007 Oak Street, Lebanon, and denied existing housing and care/service at that location to personal care residents, and members of the protected class as described in paragraph fourteen herein.

On October 20, 1994, Oakview notified Parkview that it had secured a *bona fide* offer from a third party to purchase 1407 Oak Street, Lebanon, and that Parkview had ten days in which to remove all contingencies and schedule settlement or the new offer would be accepted. Without its permit, Parkview was unable to close this real estate transaction. When the notification period lapsed, Oakview signed an agreement to sell the premises to Community Homes of Lebanon Valley, Inc.

On November 2, 1994, Community Homes applied for a Zoning Use permit to change Oakview to an apartment building of twenty-four, one bedroom units for the elderly and handicapped. Their application was denied and Community Homes appealed the denial to the Zoning Hearing Board. A hearing was held before the Zoning Hearing Board on December 14, 1994.

Community Homes presented testimony that its maximum residency would be forty-eight people, that the residents were mostly independent, two units would be specially adapted for handicapped occupants, the occupants would most likely be eighty percent single females, they had a waiting list of one hundred fifty-three and that there were no disabled people on the waiting list. Having so profiled their residents, it was clear to the Zoning Hearing Board that there would be no people with mental disabilities residing in the facility.

After hearing this, the Zoning Board voted unanimously to approve the special exception application for Community Homes, choosing to overlook the need for increased parking and increased traffic concerns. This written decision was issued January 26, 1995.

The sole factual difference between the denied application and the granted application was the mental handicap of the respective residents.

The herein Appellants unsuccessfully appealed the denials of their permit applications through the Pennsylvania State Court judicial system.

The Petitioners filed Administrative proceedings with HUD and the Pennsylvania Human Relation Commission to preserve the statutes of the Federal claims Petitioners eventually filed.

The Petitioners filed a complaint in the United States District Court for the Middle District of Pennsylvania, on March 19, 1998.

The Petitioners, who were attempting to purchase and operate a home for disabled people, brought action against the respondent, after an unsuccessful zoning appeal, which Petitioners argued was pretex for the "nimby" (not in my back yard) phenomenon, pursuant to the Fair Housing Act,

the Americans with Disabilities Act, the Rehabilitation Act of 1973 and a state pendent claim pursuant to the Pennsylvania Human Relations Act.

After discovery, the trial court granted the Defendants' Motion for Summary Judgment, arguing that the ***Rooker-Relder Doctrine*** prohibited the Petitioners from re-alleging their complaint in Federal Court, pursuant to these Federal Statutes, since the Petitioners were unsuccessful in the state zoning appeal process. (It should be noted the state process did not allow for the full and fair opportunity to litigate the nature and extent of the federal claims. The Petitioners timely preserved their right to file their federal claims in Federal Court by filing the proper administrative complaints that tolled all applicable statutes of limitations. The courts below never reached that issue.)

The Respondents' argued, and the trial court agreed, that the ***Rooker-Felder Doctrine*** applied, and the Petitioners could not use the Federal Court system as an Appellate Court for the adverse state zoning ruling.

The Petitioners appealed to the Third Circuit, and the Third Circuit reversed the trial court's granting of Respondents Summary Judgment based upon that doctrine. (See app b).

On remand, the trial court, *sua sponte*, summarily dismissed the Petitioners complaint, this time, based upon the grounds of claim preclusion, stating that the federal claims should have been brought forth in the state zoning appeal process, and are now waived.

The Petitioners filed an appeal to this finding, filed their briefs and were granted oral argument upon their appeal. However, after September 11, 2001, the Court called and stated the appeal would be submitted on the briefs.

The Third Circuit upheld the *sua sponte* summary disposal of Petitioners claim based upon the Doctrine of Claim Preclusion. (See App. 1a)

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEALS, THIRD CIRCUIT HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF THE UNITED STATES SUPREME COURT, WHICH DENIED CERTIORARI IN PRYNER VS. TRACTOR SUPPLY CO., INC., 927 F. Supp. 1140 (S.D. Ind. 1996), and 109 F. 3d. 354 (7th Cir. 1997).

The court's summary dismissal of plaintiffs' complaint based upon the doctrine of claim preclusion (f.k.a. res judicata), is nothing more than a new "spin" or "disguise" for the re-advancement of the "**Rooker Feldman**" doctrine, which was previously decided as inapplicable to this action. See **Parkview,** 255 F. 3d 321.

A close examination of the trial court's memorandum and order, at page 6, confirms that this very attempt is being made at this time.

Specifically, at footnote 3, page 6 of said court memorandum, the lower court defined the **Rooker-Feldman** doctrine as follows:

> "The **Rooker-Feldman** doctrine provides that, "Federal District Courts lack subject matter jurisdiction to review final adjudication of a state's highest court or to evaluate constitutional claims that are inextricably intertwined with the state highest court's decision in a judicial proceeding..."

Memorandum and Order, November 13, 2000, Appendix, pg. 1.

The court, after several pages of discussion of issues not directly involved in this appeal, then advanced the premise that the doctrine of claim preclusion, or res judicata, prohibits the plaintiffs' from having their cause heard by a jury.

Succinctly stated, the court, in its memorandum, fairly defines the requisites that comprise the doctrine of res judicata or claim preclusion. See, Memorandum and Order, November 13, 2000, Appendix, pg. 1; see also, **Balent vs. City of Wilkes-Barre**, 669 A. 2d 309, 313 (P.A. 1995).

The specifics that should be highlighted for purposes of the herein analysis, are as follows, *vis a vis*, the presence of claim preclusion:

1. Identity of the thing sued upon;
2. Identity of the cause of action;
3. Identity of parties or their privies, and;
4. An identity of the quality or capacity of the parties suing or being sued.

These four points were cited by the District Court in its herein memorandum at page 11, citing **McCarter vs. Mitcham**, 883 F. 2d 196, 199 (3rd Cir. Pa. 1989). See also **Rider vs. Commonwealth of Pennsylvania**, 850 F. 2d 982 (3rd Cir. Pa. 1982), cert. denied 488 U.S. 461, (1983) and **Allen vs. McCurry**, 449 U.S. 90, 94, (1980).

However, and most importantly, as specifically set forth in plaintiffs' previous appellate brief in the first appellate challenge, Corrected Brief of Appellants, March 6, 2000, the court, in the present memorandum and order, fails to cite the deciding factor that must be present for *res judicata* or claim preclusion to apply, and, that is:

> "...for the application of res judicata to apply...in the context of the federal court reviewing a state decision, the consideration is "not that the judgement was "right or wrong", since the federal court is not an appellate court for state decisions, but whether the judgment was RESPONSIVE to the issues raised.

Rooker et. al. vs. Fidelity Trust Co., 261 U.S. 114 (1923).

Thus, as previously stated at pages 18-20 of appellant's brief in the previous appellate action relating to this complaint, Corrected Brief of Appellants, March 6, 2000, the rulings of the state courts, for whatever reason, FAILED TO BE RESPONSIVE to the claims advanced in the Appellants complaint or relevant appeals.

Further, it is clear from the record that claim preclusion also does not apply to this appeal, since Plaintiffs did, in fact, raise these same allegations contained in appellant's argument in this court; however, the state courts decided the matters on grounds other than the issues related to the herein complaint-although raised at the state level. Thus, the state court rulings did not and do not satisfy this Court's ruling that they must-before claim preclusion applies. See **Rooker**, 261 U.S. 114.

In a most ironic twist, while the defendants herein argue res judicata or "claim preclusion and issue preclusion," it is the Defendants' themselves that should be barred from raising these arguments at this time.

Specifically, the Plaintiffs, subsequent to the state court actions, timely filed a complaint with the Pennsylvania Human Relations Commission, making these substantially if not similar arguments. Appendix which one, pg. 32.

The Pennsylvania Human Relations Commission issued an order that stated, in effect, that the zoning issues raised in the state court, and the mechanisms available to the plaintiffs within the confines of appealing zoning decisions, are "quite another thing" (sic) than the allegations made by the Plaintiffs in their complaint to the P.A. Human Relations Commission. See Appendix, pg. 75.

Now, this appeal begs the question, in view of the standard of review in a summary judgment appeal, what, if any, effect does the Commission's findings bar the Defendants from advancing the same arguments, in a different forum, after they were ruled upon in the attached commission ruling, based upon the doctrine of issue or claim preclusion?

As stated in the Appellant's brief in the first appeal, and now restated here, the uniqueness of this case, within the

doctrine of claim preclusion and issue preclusion, lies in the following paradox, as applied to the herein facts:

1. The appellant's did raise the arguments contained in plaintiff's complaint as the state court proceedings, (see Appendix, pg. 20, 78); however, and most importantly, the court decided the case on the limited issues regarding the zoning board decision issued below.

2. Also, the appellate process, within the issue of whether claim preclusion applies, did not provide for a "full and adequate hearing" on the matters raised that are identical to the herein complaint. this appeal was not an adequate forum to litigate full blown federal claims, as the pa human relations commission, indicated in a referential manner.

Thus, the paradox is that the appellant's did raise theses issues at the state appellate level, even though it was not an adequate forum to offer a full and fair opportunity to litigate the issues, since the court limited, by state common law, its rulings on the matters derived directly from the zoning transcripts, as opposed to a courtroom which is the usual forum to litigate federal claims such as raised in the herein complaint, with access to federal procedures, effective cross examination of witnesses and presentation of witnesses, as opposed to a zoning hearing held in a circus atmosphere. Parenthetically, the plaintiffs also raised issues related to the discrimination causes at this level, as well as the state appellate level, as previously stated herein, none of which were adjudicated.

Thus, in the final analysis, it is the Defendants, who should have been precluded from using these arguments on appeal. In fact, it is the Plaintiffs, theoretically, that can use the Pennsylvania ruling in the denial of defendant's summary judgment motion before the Pennsylvania Human Relations Commission, against the Defendant, should this Honorable Court remand the case, based upon the proffered "two way street" principle.

In fact, the Supreme Court of Pennsylvania, in **Rue vs. K-mart Corp.,** 713 A. 2d 82; (1998), specifically held that:

"We note that our holding today is limited to the application of collateral estoppel in the unemployment compensation context. It has no bearing on the body of case law concerning the preclusive effects of worker compensation proceedings". Rue, 713 A. 2d at 86, fn. 4, citing **Kohler vs. McCrory Stores,** 615 A. 2nd 27 (Pa. 1992).

Finally, in reality, we have a case that has navigated, by design or fate, through the twists and turns of the doctrines of claim and issue preclusion, and should be remanded for trial based upon the standard for summary judgment review and the definitions of claim and issue preclusion under federal and state law.

CONCLUSION

Plaintiffs, by filing administrative complaints with the Pennsylvania Human Relations Commission and the U.S. Department of Housing and Urban Development, finding Safe Harbor, thus tolling the statue of limitations as to the causes of action raised in the herein complaint, have preserved all the claims advanced for trial before the United States District Court for the Middle District of Pennsylvania.

(See the timely filing of the Pennsylvania and U.S. Department of Housing and Urban Development complaints, at Appendix, pgs. 32, 39, and 63, and the actual complaint filed by the Appellants, attached as Appendix, pgs. 20 and 78, with said Commission.)

Under the doctrine of legal and equitable tolling, as applied herein, it is clear that the appellant's complaint was timely filed with the district court and should be remanded with instructions to set this matter for trial.

WHEREFORE, for the foregoing reasons, petitioner respectfully prays that his petition for a writ of certiorari be granted.

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(Any footnotes trail end of each document)
No. 00-4164

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PARKVIEW PARTNERSHIP; CHAM NAGARAJ; SHUSHELLA NAGARAJ; G. SADASHIVARAD NAGARAJU; DAVID SIMPSON; EDWARD SHEIB,
Appellants,

v.

CITY OF LEBANON;
CITY OF LEBANON ZONING HEARING BOARD

Appeal from the United States District Court for the Middle District of Pennsylvania (D.C. Civil Action No. 98-cv-00455)
District Judge: Honorable Sylvia H. Rambo

Submitted Pursuant to Third Circuit EAR 34 1(a)

September 24, 2001

Before ROTH, WEIS and GARTH, Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on September 24, 2001.

On consideration whereof, it is now here ORDERED AND ADJUDGED by this Court that the judgment of the said District Court entered November 14, 2000, be, and the same is hereby affirmed. All of the above in accordance with the opinion of this Court. Costs taxed against appellant.

ATTEST:

Clerk

Dated: October 25, 2001

UNREPORTED NOT-PRECEDENTIAL

No. 00-4164

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PARKVIEW PARTNERSHIP; CHAM NAGARAJ; SHUSHELLA NAGARAJ; G. SADASHIVARAD NAGARAJU; DAVID SIMPSON; EDWARD SHEIB,
Appellants,

v.

CITY OF LEBANON;
CITY OF LEBANON ZONING HEARING BOARD

Appeal from the United States District Court for the Middle District of Pennsylvania (D.C. Civil Action No. 98-cv-00455)
District Judge: Honorable Sylvia H. Rambo

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 24, 2001

Before: ROTH, WEIS and GARTH, Circuit Judges

(Memorandum Opinion filed October 25, 2001)

MEMORANDUM OPINION

ROTH, Circuit Judge:

Plaintiffs, Parkview Associates Partnership, Chain Nagaraj, Shushella Nagaraj, David Simpson, and Edward Sheib ("Parkview") appeal from the District Court's order granting summary judgment to defendants, City of Lebanon and City of Lebanon Zoning Board, based on the doctrine of res judicata. On appeal, we exercise plenary review of a District Court's order granting summary judgment. In this instance, we specifically examine the District Court's application of claim preclusion principles to the facts of the

case.

In exercising plenary review over the District Court's order granting summary judgment, we find that Parkview, at the very least, could and should have litigated its claims of discrimination in state court. The Pennsylvania courts in which Parkview had proceeded before initiating this action were courts of competent jurisdiction to entertain Parkview's claims of discrimination. Furthermore, the Pennsylvania courts provided Parkview a full and fair opportunity to litigate its claims that the denial of its applications for zoning permits violated the anti-discrimination provisions of various state and federal statutes. Once Parkview voluntarily chose the Pennsylvania state courts as the forum to raise its claims arising out of the denials of its applications for zoning permits, Parkview was obligated to fully litigate all of its claims arising out of the same set of operative facts If not, any claims it did not pursue would be irretrievably waived

Having determined that the state court was of competent jurisdiction to render a decision with respect to Parkview's discrimination claims, we turn to the particular state's law of preclusion to determine whether the prior state court judgment is entitled to preclusive effect. Under Pennsylvania law, the doctrine of claim preclusion applies if the two actions share an: identity of (1) the thing being sued on, (2) the cause of action, (3) persons and parties to the action, and (4) quality or capacity of the parties suing or sued. Gregory v. Chehi, 843 F.2d 11 1, 116 (3d Cir. 1988). Here, there is no question that all four conditions are present.

Finally, Parkview's contention that the application of claim preclusion principles is inappropriate in this instanee because the state court judgment failed to be responsive to the claims advanced: in the appellants complaint or relevant appeals, is also without merit. The sole reason that the state court judgment did not respond to Parkview's discrimination claims is because Parkview knowingly abandoned its opportunity to litigate and otherwise pursue these issues at an earlier stage in the proceedings.

Because we find that Parkview could and should have litigated its discrimination claims in state court and that the

four conditions necessary to warrant the application of the doctrine of claim preclusion are present, we will affirm the district court's order granting summary judgment.

TO THE CLERK:

Please file the foregoing Memorandum Opinion.

By the Court,

Jane R. Roth

Circuit Judge

CIVIL NO. 1:CV-98-0455

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

PARKVIEW ASSOCIATES PARTNERSHIP; CHAM NAGARAJ;
SHUSHELLA NAGARAJ; DAVID SIMPSON; EDWARD SHEIB,
Plaintiffs,

v.

CITY OF LEBANON;
CITY OF LEBANON ZONING HEARING BOARD
Defendants.

Filed November 13, 2000

MEMORANDUM

Before the court is Defendants' motion for summary judgment which was granted by this court on September 9, 1999, but was subsequently reversed and remanded by the Third Circuit Court of Appeals. The parties have fully briefed the motion for summary judgment, and it is ripe for disposition. Also before the court is Defendants' motion for attorneys' fees, filed on September 22, 1999. The parties have not fully briefed said motion. However, in light of the intervening events described below, the court will address this motion herein.

I Background

The instant case arises from Plaintiffs' allegations that Defendants illegally denied Plaintiffs' request for the issuance of two separate zoning permits. Specifically, Plaintiffs allege that Defendants' denials of the permits were acts of discrimination in violation of the following statutes: the Fair Housing Amendments Act ("FHAA"), 42 U.S.C. 3601-363 1; Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213; the Rehabilitation Act of 1973 ("RHA"),

29 U.S.C. §§701-796(1); and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. Ann. §§ 951-963.

The following facts are undisputed, except where noted: Plaintiffs in the captioned case are Parkview Associates Partnership ("Parkview"), an association formed for the purpose of engaging in the business of real estate and equipment ownership, and the following individual partners in Parkview: Cham Nagaraj, Shushella Nagaraj, David Simpson, and Edward Sheib. Defendants are the City of Lebanon ("City") and the City of Lebanon Zoning Hearing Board ("Board").

On November 15, 1993, Cham Nagaraj entered into an agreement ("Agreement") to purchase the real estate and facilities utilized by the Oakwood Residential Care and Nursing Home ("Oakwood"), a nursing home and personal care facility located in the City which was licensed to house 22 personal care residents and 28 skilled nursing patients. The Agreement was between Cham Nagaraj and Oakwood's board of directors; however, Parkview was the assignee of the rights of Cham Nagaraj under the Agreement. On November 24, 1993, Oakwood closed its operations.

On November 29, 1993, the City's Zoning Officer issued Plaintiffs fn1 a Zoning Use Permit ("Permit I") to convert the former Oakwood facility to a personal care facility consisting of 70 beds and 55 rooms. On March 2, 1994, certain affected property owners filed an application for administrative review ("Application") of the issuance of Permit I. On April 6 and April 13, 1994, the Board held hearings on the Application, during which the Board heard comments and testimony by affected property owners and other witnesses. The Board issued a verbal decision on the Application on May 4, 1994, and a written decision on May 18, 1994, finding, in pertinent part, that:

> 1. The permit issued by the Zoning Officer to convert Oakwood from a Nursing Home and Personal Care Facility to a Personal

> Care Facility only was in error.
>
> 2. The proposed use by [Plaintiffs] is more nonconforming and not equally appropriate or more appropriate to the district than the prior use by Oakwood and a Special Exception [will] not issue.

(Answer, Ex. B. at 8.)
Plaintiffs then filed an appeal of the Board's decision ("Permit I Appeal") with the Court of Common Pleas for Lebanon County ("Lebanon County Court"), contending that "[t]he action of the [Board] in rendering its decision... and in revoking the permit was arbitrary, capricious, an abuse of discretion and contrary to law" in several ways. (Defs.' Ex. B, ¶ 7.) By order dated November 29, 1994, the Lebanon County Court denied Plaintiffs' Permit I Appeal, affirming the Board's revocation of Permit I. The Lebanon County Court found that Plaintiffs raised the following three issues on appeal:

> 1. Whether Objectors filed a timely appeal from the issuance of the use permit to [Plaintiffs] by the City Zoning Officer.
>
> 2. Whether the City Zoning Officer was acting within his authority when the permit was issued.
>
> 3. Whether the proposed use of the facility by [Plaintiffs] qualifies as a permitted use by special exception as a convalescent home, or whether the proposed non-conforming use was equally or more appropriate to the use district than the existing non-conforming use.

(Answer, Ex. C.)

The Lebanon County Court went on to find that, pursuant to the applicable standard of review, the Board correctly held

that: (1) the Objectors' appeal was timely; (2) the City Zoning Officer issued Plaintiffs' permit in error; and (3) Plaintiffs' proposed use would "change the essential character of the neighborhood and increase the non-conformity." (Id. at 9.) With respect to the third issue, the Lebanon County Court specifically noted that "the record adequately supports the Board's findings, and contains no demonstration of any improper motive prompting the Board's actions." (Id. at 10.)

Plaintiffs then appealed the decision rendered by the Lebanon County Court to the Commonwealth Court of Pennsylvania. By order dated October 20, 1995, the Commonwealth Court affirmed the Lebanon County Court's denial of the Permit I Appeal. (Answer, Ex. D.) Plaintiffs then filed a petition for allowance of appeal with the Pennsylvania Supreme Court, which was denied on May 28, 1996. (Answer, Ex. E.) Plaintiffs did not seek a writ of certiorari from the United States Supreme Court.

On September 7, 1994, while the Permit I Appeal was pending before the Lebanon County Court, Plaintiffs filed an application for a zoning permit to operate a 50-53 bed personal care home at the former Oakwood facility ("Permit II"). The City's Zoning Officer denied Plaintiffs' Permit II application on the same day, indicating that under the applicable provision of the City's Zoning Code, Plaintiffs' proposed conversion of a non-conforming use requires a "special exception.". Accordingly, on September 14, 1994, Plaintiffs appealed the Zoning Officer's denial of Permit II to the Board by filing a petition for a special exception to convert the former Oakwood property to a 50-53-bed personal care facility ("Permit II Petition"). On October 5, 1994, the Board conducted a hearing on the Permit II Petition and issued a verbal decision denying it. The Board issued a written decision on November 14, 1994, finding, in relevant part, that:

> [t]he proposed change of use to a fifty (50) bed personal care facility would significantly change the character of the neighborhood. The

> proposed use would not be compatible with the neighborhood.

(Answer Ex. G.)

Plaintiffs appealed the Board's denial of the Permit II Petition to the Lebanon County Court ("Permit II Appeal").[2] By order and opinion dated April 18, 1997, Plaintiffs' Permit II Appeal was denied by the Lebanon County Court. (Answer, Ex. H.) According to the Lebanon County Court, Plaintiffs raised the following two issues in their appeal:

> 1. Whether the [Board] erred by finding that [Plaintiffs] satisfied all but one of eight criteria needed to obtain a permit by special exception, that being compatibility; [and]
>
> 2. Whether the proposed use of the subject premises by [Plaintiffs] qualifies as a permitted use by special exception or whether the proposed nonconforming use was equally or more appropriate to the use district than the existing nonconforming use.

(Answer, Ex. H.)

The Lebanon County Court went on to find that the Board neither committed an abuse of its discretion nor error of law when it found that Plaintiffs' proposed use of the former Oakwood facility was not an equally appropriate or more appropriate use than that of Oakwood. (Id. at 6-7.)

Plaintiffs appealed the decision of the Lebanon County Court to the Pennsylvania Commonwealth Court on May 27, 1997, but subsequently withdrew their appeal. (Answer, Ex. I.)

On March 19, 1998, Plaintiffs filed a four-count complaint in this court, alleging that the Board's denials of Permit I and II violated the FHAA (Count I); the ADA (Count II); the RHA (Count III); and the PHRA (Count IV). Defendants filed a

motion for summary judgment on May 28, 1999, asserting four bases for why summary judgment is appropriate: (1) Plaintiffs' claims are barred by the doctrines of issue preclusion and/or claim preclusion based on either traditional preclusion principles or the Rooker-Feldman doctrine;[3] (2) Plaintiffs lack standing to assert claims under the FHAA; (3) Plaintiffs' claims against the City cannot stand because there are no allegations of improper conduct by any city official; and (4) Plaintiffs' claims are barred by the applicable statutes of limitation and because Plaintiffs failed to exhaust their administrative remedies.

In a memorandum and order dated September 9, 1999, this court granted summary judgment in favor of Defendants, finding that the court did not have jurisdiction over Plaintiffs' claims based on the Rooker-Feldman doctrine. The court did not address the merits of any of Defendants' other arguments in favor of their summary judgment motion. Defendants then filed a motion for the award of attorneys' fees on September 22, 1999. Plaintiffs subsequently appealed the disposition of the summary judgment motion, and this court stayed Defendants' motion for attorneys' fees pending the outcome of Plaintiffs' appeal. The parties had not fully briefed the issue of attorneys' fees when the court entered the stay.

The Third Circuit Court of Appeals reversed the grant of summary judgment, holding that Rooker-Feldman did not apply to Plaintiffs' claims, but took no position on whether Plaintiffs' claims might be barred by either claim preclusion or issue preclusion. See Parkview Assocs. P'ship v. City of Lebanon, 225 F.3d 321, 330 (3d Cir. 2000). The Third Circuit did not address any of Defendants' other alleged bases for summary judgment, as this court had not previously addressed them. The case was remanded for further proceedings, not inconsistent with the Third Circuit's opinion.

II. Legal Standard: Summary Judgment

Federal Rule of Civil Procedure 56 provides that summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A factual dispute is "material" if it might affect the outcome of the suit under the applicable law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "genuine" only if there is a sufficient evidentiary basis which would allow a reasonable fact-finder to return a verdict for the non-moving party. See id. at 249. The court must resolve all doubts as to the existence of a genuine issue of material fact in favor of the non-moving party. See White v. Westinghouse EEC. Co., 862 F.2d 56, 59 (3d Cir. 1988).

Once the moving party has shown that there is an absence of evidence to support the claims of the non-moving party, the non-moving party may not simply sit back and rest on the allegations in his complaint; instead, he must "go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, and designate specific facts showing that there is a genuine issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (internal quotations omitted). Summary judgment should be granted where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden at trial." Id.

III. Discussion

In addition to Rooker-Feldman, Defendants also rely upon the doctrines of res judicata and collateral estoppel in theft motion for summary judgment. For the purposes of this memorandum, the court will use the terminology of "issue preclusion" for what has been traditionally referred to as collateral estoppel, and "claim preclusion" in lieu of res judicata. Gregory v. Chehi, 843 F.2d 111, 115-16 (3d Cir. 1998)

(recognizing that courts, including the Supreme Court, have refined the nomenclature of these doctrines).

A. Issue Preclusion

Issue preclusion is described as follows: "once a court decides an issue of fact or law necessary to its judgment, that decision precludes relitigation of the same issue on a different cause of action between the same parties." Kremer v. Chem. Constr. Corp, 456 U.S. 461, 467 n.6 (1982); also Gregory, 843 F.2d at 116 (holding that issue preclusion "bars relitigation only of an issue identical to that adjudicated in the prior action"). Thus, a threshold requirement of issue preclusion is that the specific issue in question was raised and litigated in prior proceedings. "In issue preclusion cases the earlier judgment forecloses only a matter actually litigated and essential to the decision:" Id.

In the present action, the Third Circuit declined to decide whether preclusion barred Plaintiffs' discrimination claims in federal court. Parkview, 255 F.3d at 330. However, in its analysis of the applicability of Rooker-Feldman, the Third Circuit was required to decide whether Plaintiffs' disability discrimination claims had been "actually litigated."[4] The appellate court held that these claims had not been litigated since Plaintiffs did not raise discrimination claims before the state courts on appeal from the Board's decisions. See id. at 325. Plaintiffs did not cite the relevant statutes or argue that the Board's decisions violated disability discrimination laws. See id. at 325-26. Finally, the Third Circuit noted that the state courts "reviewed the Board's decisions solely in their appellate capacity, taking no new evidence, and affirmed the Board's decisions as supported by substantial evidence in the record without deciding whether the decisions violated federal or state anti-discrimination laws." Id.

Because the Third Circuit has already held that Plaintiffs have not litigated their discrimination based claims in any previous action, the court finds that issue preclusion does not bar the present claims.

B. Claim Preclusion

The doctrine of claim preclusion is far broader than issue preclusion. Claim preclusion bars parties from litigating not only claims that were raised and litigated in a prior action, but also claims that could have been raised, but were not. See Kremer, 456 U.S. at 466-67 n.6; Gregory, 843 F.2d at 116. Where a state court issues the initial judgment that parties rely upon for claim preclusion, courts look to that state's law to determine whether preclusion applies. Pursuant to 28 U.S.C. § 1738, a state court's judgment must be given the same effect in federal court that it would have been given in state court. See Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373 (1985). The Pennsylvania Supreme Court has defined claim preclusion:

> [C]laim preclusion is a doctrine by which a former adjudication bars a later action on all or part of the claim which was the subject of the first action. Any final, valid judgment on the merits by a court of competent jurisdiction precludes any future suit between the parties or their privities in the same action. [Claim preclusion] applies not only to claims actually litigated, but also to claims which could have been litigated during the first proceeding if they were part of the same cause of action.

Balent v. City of Wilkes-Barre, 669 A.2d 309, 313 (Pa. 1995).

Preclusion will not attach unless the original court(s) had jurisdiction over the claim brought in the subsequent action. See McCarter v. Mitcham, 883 F.2d 196, 199 (3d Cir. 1989). Therefore, in order for claim preclusion to bar Plaintiffs' claims, the Board or the state courts must have had jurisdiction to adjudicate these claims. Here, Defendants assert, and Plaintiffs do not dispute, that the Pennsylvania Municipalities Planning Code ("PMPC") contains provisions that would confer jurisdiction on the Pennsylvania courts to hear Plaintiffs' discrimination based claims. Specifically, the

PMPC outlines procedures for making constitutional challenges to the substantive validity of provisions of zoning ordinances. 53 Pa. Cons. Stat. Ann. § 10916.1; see also Brame v. Buckingham Township, No. 96-5821, 1997 WL 288673, at *5 (B.D. Pa. May 23, 1997) (finding jurisdiction was appropriate in county court for plaintiff to have raised federal constitutional challenges to zoning board decisions); Reynolds v. Zoning Bd. of Abington Township, 578 A.2d 629, 629 (Pa. Commw. Ct. 1990) (holding that municipalities planning code set forth exclusive procedures for asserting constitutional challenges to zoning decisions). Therefore, the court finds that the Board and the state courts were of competent jurisdiction to hear Plaintiffs' claims and proceeds to an analysis of the necessary elements for claim preclusion to apply.

Claim preclusion bars a subsequent action where there exists: (1) an identity of the thing sued upon; (2) an identity of the cause of action; (3) an identity of the persons and parties to the action or their privies; and (4) an identity of the quality or capacity of the parties suing or being sued. See McCarter, 883 F.2d at

199. Furthermore, "[a]lthough consistent in demanding satisfaction of these four criteria, the state courts have avoided mere technical adherence to mechanical principles." Gregory. 843 F.2d at 116 (citing Commonwealth of Pennsylvania Dep't of Transp. v. Mitchell, 535 A.2d 581 (Pa. 1987)). Thus the question before the court is whether Plaintiffs are barred from bringing their discrimination based claims, which have not been heard by any other court, because of the related litigation that has already occurred in state court.

1. Identity of Subject Matter

The court must isolate Defendants' alleged wrongful acts to determine whether the first prong of claim preclusion is met. See Gregory, 843 F.2d at 116. Here, Plaintiffs' alleged wrong is the denial of two zoning permits. The denial of these permits

formed the basis of Plaintiffs' state law claims when they appealed the Board's decision On Permit I all the way to the Supreme Court of Pennsylvania and appealed the denial of Permit II to the Lebanon County Court. Therefore, the court finds that there exists identity of subject matter between the state proceedings and the current claims.

2. Identity of Cause of Action

For the second prong of the claim preclusion analysis, identity of cause of action, preclusion generally "turn[s] on the essential similarity of the underlying events giving rise to the various legal claims." Davis v. United States Steel Supply, 688 F.2d 166, 171 (3d Cir. 1982). The Supreme Court of Pennsylvania has applied claim preclusion where a Plaintiff brings a separate cause of action under a different legal theory, noting that the actions complained of in both claims were identical and that the plaintiff would probably call the same witnesses and present the same
evidence during subsequent litigation. See Gregory, 843 P.2d at 117 (citing Helmig v. Rockwell Mfg. Co., 131 A.2d 622, 626 (Pa. 1957)).

Applying these principles, the court is pursuaded that there is an identity of cause of action between Plaintiffs' state law claims and the case presently before the court. As discussed above, there is an essential similarity of underlying events. See supra § III.B.1 Specifically, the denials of the two permits are the underlying events that led to both the state proceedings and these proceedings.

Furthermore, regarding the witnesses and evidence that Plaintiff would present at trial, Plaintiffs virtually concede that they would be the same as those presented during the state proceedings. (Pl. Br. at 12) ("There was no need to introduce further evidence in support of the raised discriminatory claims since the record they produced (hearing transcripts) and the arguments made in said briefs contained overwhelming evidence of discrimination.")

Plaintiffs contend that they did not raise their discrimination claims in a prior action because some evidence of discrimination has come to light through discovery. However, Plaintiffs have failed to point to any specific facts of record indicating that new evidence of discrimination has been uncovered. Moreover, while Plaintiffs did not actually litigate the issue of disability discrimination in any of the state court proceedings, the record indicates that Plaintiffs were aware of potential discrimination based challenges when they proceeded there. Specifically, in their Notice of Appeal of the denial of Permit I to the Lebanon County Court, Plaintiffs contended:

> Appellees injected speculative testimony about age, physical and mental aspects of proposed residents of the facility, which was irrelevant impertinent and unlawful and which created a climate of fear and apprehension which improperly influenced the neighbors and the Board in coming out against the issuance of [Permit I].

(Defs.' Ex. B, ¶ 7(ak) (emphasis added).)

The court held in its original memorandum and order granting Defendants' summary judgment motion that this paragraph was insufficient to adequately raise a claim of disability discrimination. However, the paragraph is sufficient to indicate that Plaintiffs had some awareness of the potential for discrimination based claims as early as their appeal of the denial of Permit I. Thus, their argument that they could not raise the claims earlier because new evidence came to light during discovery is unpersuasive.

As the Third Circuit in Gregory noted, "[d]istinct causes of action do not arise merely because the motivations alleged in the two forums differ," 843 F.2d at 118, and the fact that Plaintiffs now assert a different theory of recovery does not defeat the applicability of claim preclusion. Accordingly, the court holds that there exists identity of cause of action

between the state proceedings and the instant claims.

3. Identity of Parties or Privies,

The third requirement for preclusion to apply is whether or not there exists an identity Of parties or their privies. In Pennsylvania, privity in this context is defined as "mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right." non v. McCloskey, 655 A.2d 549, 554 (Pa. Super. Ct. 1995).

Neither party in the present action disputes that there is an identity of parties. Parkview was the Plaintiff in the original state proceedings. The only parties that have been added as Plaintiffs in the present suit are four individual partners of Parkview. Thus, there is clearly an identification of these individual partners in the rights asserted in the state actions. Furthermore, in the original state actions, the named Defendant was the City of Lebanon Zoning Board. Here, Plaintiffs have only added the City of Lebanon as an additional Defendant. Because the Board is an agency of the City, this court agrees with the United States District Court for the Eastern District of Pennsylvania which held that identity of parties or their privies for claim preclusion is satisfied where a zoning board was the sole defendant in the state court action and the municipality itself was added in a subsequent federal claim. See Brame v. Buckingham Township, No. 96-582 1, 1997 WL 288673 (E.D. Pa. May 23, 1997).

4. Identity of Quality or Capacity of Parties

The final element of the preclusion analysis involves an assessment of the capacity in which individuals are suing or being sued. Thus, for example, if a defendant is first sued in his individual capacity then in a subsequent action is sued in his official capacity, this prong of the preclusion analysis may be defeated. However, in the present case, the named Defendants are the City of Lebanon Zoning Board and the

City of Lebanon itself. There are no individual defendants being added into the suit that are being sued in different capacities. Therefore, there exists an identity of the 'quality or capacity of parties between Plaintiffs' state proceedings and the instant action.

C. Attorneys' Fees

This court stayed Defendants' September 22, 1999 motion for attorneys' fees pending the outcome of Plaintiffs' appeal of the disposition of the summary judgment motion. Because there have been intervening proceedings in this case, the court will not address the merits of Defendants' original motion for attorneys' fees. Instead, the court will dismiss Defendants' motion without prejudice to either party to file a new motion for attorneys' fees.

IV. Conclusion

Because the Pennsylvania courts where Plaintiffs' prior actions against Defendants were adjudicated were courts of competent jurisdiction, and because there exists identities of the things sued upon, the causes of action, the parties or their privies, and the quality or capacity of the parties suing or being sued, the court holds that claim preclusion bars Plaintiffs' claims. Furthermore, the court will dismiss Defendants' motion for attorneys' fees without prejudice to either party to file a new motion for the award of such fees. An appropriate order will issue.

SYLVIA H. RAMBO
United States District Court Judge

November 13, 2000

Footnotes

[1] The court notes that although the permit was actually issued in the name of Parkview Associates Partnership, several of Parkview's partners are named as Plaintiffs in the instant action. Therefore, in the interest of brevity, the court will use

the terms Parkview and Plaintiffs interchangeably.

[2] The record does not reflect the exact dates on which Plaintiffs filed the Permit I Appeal with the Commonwealth Court, the petition for allowance of appeal with the Pennsylvania Supreme Court, or the Permit II Appeal with Lebanon County Court. However, these dates axe not material for purposes of the instant motion.

[3] The Rocker-Feldman doctrine provides that, "federal district cowls lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are inextricably intertwined with the state court's decision in a judicial proceeding." Blake v. Papadakos, 953 F.2d 68, 71 (3d Cir. 1992) (internal quotations and citations omitted) (footnote added); see Guarino v. Larsen, 11 F.3d 1151, 1156 (3d Cir. 1993); Valenti v. Mitchell, 962 F.2d 288, 296 (3d Cir. 1992). A more thorough analysis of the doctrine is unnecessary for the present memorandum because, as discussed infra, the Third Circuit has held that it does not apply to Plaintiffs' claims. It should be noted, however, that Rooker-Feldman is not a form of preclusion, but is a jurisdictional bar to certain claims.

[4] Rooker-Feldman applies to claims that were either fully litigated or inextricably intertwined with state court actions. See Gulla v. North Strabane Township. 146 F.3d 168, 171 (3d Cir. 1998).

CIVIL NO. 1:CV-98-0455

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

PARKVIEW ASSOCIATES PARTNERSHIP; CHAM NAGARAJ; SHUSHELLA NAGARAJ; DAVID SIMPSON; EDWARD SHEIB,
Plaintiffs,

v.

CITY OF LEBANON;
CITY OF LEBANON ZONING HEARING BOARD
Defendants.

Filed November 13, 2000

ORDER

In accordance with the foregoing memorandum of law, IT IS HEREBY ORDERED THAT:

(1) Defendants' motion for summary judgment is GRANTED.

(2) Defendants' motion for attorneys' fees is DISMISSED without prejudice to either party to file a new motion for attorneys' fees.

(3) The Clerk of Court shall enter judgment in favor of Defendants and against Plaintiffs on all counts and close the case.

SYLVIA H. RAMBO
United States District Court Judge

November 13, 2000

No. 00-4164

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PARKVIEW PARTNERSHIP; CHAM NAGARAJ; SHUSHELLA NAGARAJ; G. SADASHIVARAD NAGARAJU; DAVID SIMPSON; EDWARD SHEIB,
Appellants,

v.

CITY OF LEBANON;
CITY OF LEBANON ZONING HEARING BOARD

Appeal from the United States District Court for the Middle District of Pennsylvania (D.C. Civil Action No. 98-cv-00455)
District Judge: Honorable Sylvia H. Rambo

Before: BECKER, Chief Judge, SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO ROTH, MCKEE, RENDELL, BARRY, AMBRO, FUENTES, WEIS* and GARTH*, Circuit Judges

ORDER

The petition for rehearing en banc filed by the appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

Circuit Judge

Dated: December 3, 2001

Footnotes

*Honorable Joseph F. Weis and Honorable: Leonard I. Garth, Senior Third Circuit Judges, vote limited to panel rehearing only.

NO. 99-3828

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PARKVIEW ASSOCIATES PARTNERSHIP; CHAM NAGARAJ;
SHUSHELLA NAGARAJ; DAVID SIMPSON; EDWARD SHEIB,
Appellants

v.

CITY OF LEBANON;
CITY OF LEBANON ZONING HEARING BOARD

On Appeal from the United States District Court for the
Middle District of Pennsylvania
(D.C. Civil No. 98-cv-00455)
District Judge: Hon. Sylvia H. Rambo

Argued June 13, 2000

Before: SLOVITER, BARRY and ALDISERT, Circuit Judges

(Filed August 23, 2000)

Mark Steven Colucci (Argued)
Youngstown, Ohio 44503
Attorney for Appellants

Jonathan F. Ball (Argued)
Marshall, Dennehey, Warner, Coleman & Goggin
Philadelphia, PA 19103
Attorney for Appellees

OPINION OF THE COURT

SLOVITER, Circuit Judge.

I.

Plaintiffs Parkview Associates Partnership, Chant Nagaraj, Shushella Nagaraj, David Simpson, and Edward Sheib (collectively "Parkview") appeal the District Court's order dismissing its action against the City of Lebanon and the City of Lebanon Zoning Hearing Board for lack of subject matter jurisdiction. We must decide whether the District Court erred in holding that the Rooker-Feldman doctrine precluded it froth entertaining a suit challenging the denial of a zoning permit as violative of federal and state anti-discrimination statutes because there had been a state court appellate, on-the-record review of the adverse zoning decision.

II.

The underlying dispute stemmed from the efforts of Parkview to obtain a zoning permit to convert the former Oakwood Residential Care and Nursing Home, a nursing home and personal care facility in the City of Lebanon, into a personal care facility. Oakwood operated as a non-profit hone with 26 nursing beds and 22 personal care beds until its closure on November 24, 1994. It was located in an area zoned as a Residential Low Density District in the City of Lebanon. The City's zoning ordinance does not permit a personal care facility in that area. However, the home, including its personal care portion, had operated at that location for more than 50 years and, as it had been in existence before the adoption of the zoning ordinance, was considered a valid non-conforming use.

In November 1993, Parkview entered into an agreement to purchase Oakwood's real estate and facilities to be converted into a full personal care facility with no nursing beds.[1] On November 29, 1993, Parkview obtained a zoning use permit from a city zoning officer to operate a 70-bed personal care home at the Oakwood location as a continuation of the existing non-conforming use. On March 2, 1994, however, two residents of the neighborhood where Oakwood was located filed an appeal with the City of Lebanon Zoning Hearing

Board (the "Board") objecting to the issuance of the zoning permit on the ground that the proposed use was a substantial change in use that was more non-conforming than the existing use.

After hearings held in April 1994, the Board revoked Parkview's permit. It found that the zoning officer who had issued the permit acted beyond his authority when he issued the permit without requiring a hearing. The Board concluded that Parkview's proposed use would change the essential character of the prior use and would increase non-conformity, thus making it ineligible for a special exception permit.

Parkview appealed the Board's decision to the Court of Common Fleas of Lebanon County under the procedure set out in Pa. Stat. Ann. tit. 53, S 11002-A. Although the parties have not described the statutory procedure, it appears that the Court of Common Pleas may hold a hearing and receive additional evidence in considering the appeal, see Pa. Stat. Tit. 53, S 11005-A, but if the court does not take additional evidence, then it, the Commonwealth Court, and/or the Supreme Court of Pennsylvania may overturn the Zoning Hearing Board's decision only if the Zoning Hearing Board committed an abuse of discretion or an error of law. See Baker v. Chartiers Township Zoning Hearing Bd., 677 A.2d 1274, 1276 (Pa. Commw. Ct. 1996). "A conclusion that the zoning hearing board abused its discretion may be reached only if its findings are not supported by substantial evidence." Id.

In its appeal to the court, Parkview set forth 39 separate reasons why the Board's decision was an abuse of discretion and/or contrary to law. Although Parkview alleged in its notice of appeal to the Court of Common Pleas that the Board's consideration of the age of putative residents was illegal under state and federal anti-discrimination statutes,: it did not allege the disability- based discrimination claims that it now presents in federal court.

The Court of Common Pleas affirmed the Board's decision after reviewing the record before the Board to determine whether there was substantial evidence to support its decision. The court did not mention Parkview's allegations of age discrimination, defining its duty in the appeal as "to examine the record and determine whether the board committed either an abuse of discretion or an error of law concerning the issues raised by Parkview," App. at 62, and characterizing Parkview's claims as challenging the Board's application of the zoning laws to the evidence before it. The court described Parkview's challenges to the Board's decision as follows:

> 1. Whether Objectors filed a timely appeal from the issuance of the use permit to Parkview by the City Zoning Officer.
>
> 2. Whether the City Zoning Officer was acting within his authority when the permit was issued.
>
> 3. Whether the proposed use of the facility by Parkview qualifies as a permitted use by special exception as a convalescent home, or whether the proposed non-conforming use was equally or more appropriate to the use district than the existing non-conforming use.

App. at 63.

Parkview appealed the decision of the Court of Common Pleas to the Commonwealth Court of Pennsylvania, which also affirmed after on-the-record review. Parkview filed a petition for allowance of appeal with the Pennsylvania Supreme Court, which was denied.

On September 7, 1994, white its appeal was pending in the Court of Common Pleas, Parkview filed a second permit application with the City, This time the proposed use was f or

a 50 to 53 bed personal care home on the Oakwood site. The City zoning official denied the application, finding that the proposed use was a conversion of a non-conforming use that required a special exception. Parkview appealed the denial to the Zoning Hearing Board by filing a petition for a special exception. The Board held a hearing on October 5, 1994, and issued a written opinion on November 14, 1994, finding, inter alia, that the proposed change of use would significantly change the character of the neighborhood. Parkview appealed the Board's decision to the Court of Common Pleas, which affirmed after on-the-record review. Parkview appealed that decision to the Commonwealth Court of Pennsylvania on May 27, 1997 but subsequently withdrew its appeal.

On March 19, 1998, Parkview filed suit in the United States District Court for the Middle District of Pennsylvania against the City of Lebanon and the City of Lebanon Zoning Hearing Board (collectively "the City") alleging that the Board's denials of the zoning permits were acts of discrimination on the basis of disability that violated the Fair Housing Act, 42 U.S.C. 35 3601-3631, the Americans with Disabilities Act, 42 U.S.C. SS 12101-12213, the Rehabilitation Act of 1973, 29 U.S.C. 33 701-796(1), and the Pennsylvania Human Relations Act, Pa. Stat. Ann. tit. 43, SS 951-963. The City moved for summary judgment on all counts arguing, inter alia, that the District Court lacked jurisdiction over the action under the Rooker-Feldman doctrine. The District Court granted the motion on that ground, holding that Parkview's disability-based discrimination claims were barred under the Hooker-Feldman doctrine even though Parkview had not raised, and the state court had not decided, those claims in the state proceeding.

Our review of the District Court's grant of summary judgment and its application of the Rooker-Feldman doctrine is plenary. See Gulla v. North Strabane Township, 146 F.3d 168, 171 (3d Cir. 1998).

III.

The Rooker-Feldman doctrine is based on the statutory foundation of 28 U.S.C. S 1257 and the well-settled understanding that the Supreme Court of the United States, and not the lower federal courts, has jurisdiction to review a state court decision. Section 1257 states, in relevant part:

> [f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States . .

The doctrine derives from two Supreme Court decisions, Hooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). In Hooker, a party to a state court action that had been affirmed by the state's supreme court brought a bill in equity in federal district court seeking to have the state court judgment declared null and void as being in violation of the United States Constitution. The plaintiffs' allegations in the federal suit were indistinguishable from those usually made in an appeal! they claimed that the state court had given effect to an unconstitutional state statute and had failed to give effect to a prior decision that had become law of the case. See 263 U.S. at 415.

The Supreme Court held that the district court lacked jurisdiction over the action. The Court stated:

> It affirmatively appears from the bill that the judgment was rendered in a cause wherein the circuit court had jurisdiction of both the subject matter and the parties; that a full

> hearing was had therein; that the judgment was responsive to the issues, and that. it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, hut merely left it open to reversal or modification in an appropriate and timely appellate proceeding.

Id. Hooker thus stands for the elementary principle that a party's recourse for an adverse decision in state court is an appeal to the appropriate state appellate court, and ultimately to the Supreme Court under S 1257, not a separate action in federal court.

In Feldman, 460 U.S. 462, decided sixty years after Rooker, plaintiffs Marc Feldman and Edward J. Hickey, Jr., filed suit in federal court seeking permission to sit for the District of Columbia bar examination without having attended an ABA accredited law school, a requirement under the rules for bar admission adopted by the District of Columbia Court of Appeals. Prior to filing their federal suit, Feldman and Hickey had each petitioned the District of Columbia Court of Appeals for a waiver of the rule. Both applicants had stressed in their petitions the equitable reasons for waiving the requirement as to them. Feldman's petition had also raised questions of the constitutionality of application of the rule if the District of Columbia Court of Appeals rejected his request. Mickey had submitted evidence of his qualifications and stressed the burden that would be placed on him if the court refused his petition.

After the District of Columbia Court of Appeals denied their petitions for waiver, Feldman and Mickey filed suits in federal district court alleging that the denials of their petitions violated, inter alia, the Fifth Amendment of the

United States Constitution: and federal antitrust laws. They sought orders from the district court requiring the District of Columbia Court of Appeals to allow them to sit for the. bar examination.

The Supreme Court held that the district court lacked jurisdiction over the federal actions. It ruled that the proceedings before the District of Columbia Court of Appeals were judicial in nature and that Feldman and Hickey could not resort to federal court to challenge those judicial decisions. The Court stated:

> [T]he[ ] allegations that the District of Columbia Court of Appeals acted arbitrarily and capriciously in denying their petitions for waiver and that the court acted unreasonably and discriminatorily in denying their petitions in view of its former policy of granting waivers to graduates of unaccredited law schools required the District Court to review a final judicial decision of the highest court of a jurisdiction in a particular case.
>
> These allegations: are inextricably intertwined with the District of Columbia Court of Appeals' decisions, in judicial proceedings, to deny the respondents' petitions.

Id. at 486.

Although the Court held that the plaintiffs' claims challenging the District, of Columbia Court of Appeals' decisions to deny them waivers of the rule could not be brought in the district court because those challenges were inextricably intertwined with the state court proceedings, the Court permitted district court adjudication of plaintiffs' general claims challenging the constitutionality of the rule itself. The Court explained:

> [T]o the extent that Hickey and Feldman sought review in the District Court of the District of Columbia Court of Appeals' denial of their petitions for waiver the District Court lacked subject-matter jurisdiction over their complaints. Hickey and Feldman should have sought review of the District of Columbia Court of Appeals' judgments in this Court. To the extent that Hickey and Feldman mounted a general challenge to the constitutionality of [the rule requiring attendance of an accredited law school], however, the District Court did have subject-matter jurisdiction over their complaints.

Id. at 482-83 (footnote omitted).

This court has described the Hooker-Feldman doctrine as precluding lower federal court jurisdiction over claims that were actually litigated or "inextricably intertwined" with adjudication by a state's courts. See Gulla v. North Strabane Township, 146 F.3d 168, 171 (3d Cir. 1998); Blake v. Papadakos, 953 F.2d 68, 71 (3d Cir. 1992); see also Port Auth. Police Benevolent Ass'n, Inc. v. Port Auth. , 973 F.2d 169, 178 (3d Cir. 1992) (extending application of the doctrine to decisions by lower state courts). Further, we have explained that a federal action is inextricably intertwined with a state adjudication, and thus barred in federal court under Feldman, "[w]here federal relief can only be predicated upon a conviction that the state court was wrong." Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989) (quoting Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 25 (1987) (Marshall, J., concurring)).

Applying that test to this case, we consider first whether Parkview's disability-based discrimination claims were actually litigated by the state court. We conclude that they were not. The record makes plain, and the City does not dispute, that Parkview did not present its disability-based discrimination claims to the state courts on appeal from the Board's decisions. Parkview neither cited the relevant

statutes nor argued that the Board's decisions violated federal or state law prohibiting discrimination on the basis of disability. Moreover, the state courts' opinions reveal that the courts reviewed the Board's decisions solely in their appellate capacity, taking no new evidence, and affirmed the Board's decisions as supported by substantial evidence in the record without deciding whether the decisions violated federal or state anti-discrimination laws. The City does not disagree.

We next consider whether Parkview's claims are inextricably intertwined with the previous state court adjudication. Again, we conclude that they are not. As discussed above, the state court proceedings in this case were limited to appellate, on-the-record review of whether the Zoning Hearing Board abused its discretion or committed an error of law in determining that Parkview's proposal would change the essential character of the prior use and would increase nonconformity. In order to decide Parkview's claims alleging that the Board based its decisions on considerations prohibited by state and federal anti-discrimination statutes, the District Court here would net have to review the state courts' determinations that the Board's decisions were supported by substantial evidence in the record. In other words, adjudication by a federal court of Parkview's discrimination claims would not require the federal court to determine that the state court was wrong. See Centifanti, 865 F.2d at 1430.

Our conclusion that Rooker-Feldman does not bar jurisdiction in the District Court over Parkview's discrimination claims is consistent with the overwhelming precedent in this court construing the Hooker-Feldman doctrine narrowly. See Whiteford v. Heed, 155 F.3d 671, 674 (3d Cir. 1998), cert. denied, 120 5. Ct. 2231 (2000) (holding that Hooker-Feldman did not bar jurisdiction over a plaintiff 's claim that had been rejected on procedural grounds by the state court); Gulla, 146 F.3d at 172-173 (holding that Rooker-Feldman did not bar jurisdiction over plaintiffs' federal constitutional claims because those claims had been

dismissed in the state court for lack of standing); Ernst v. Child & Youth Servs., 108 F.3d 486, 491-92 (3d Cir. 1997) (holding that Rooker-Feldman did not bar jurisdiction over plaintiff 's claim because the state court had net considered that claim and because a federal court ruling on plaintiff 's claim "would not have required the court to find that the state court judgments . . were erroneous"); FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 841-42 (3d Cir. 1996) (holding that Rooker-Feldman did not bar jurisdiction over plaintiff 's claim because a federal court's determination of the claim "would not need to conclude that the state court's decision was erroneous"); Marks v. Stinson, 19 F.3d 873, 885 n.11 (3d Cir. 1994) (holding that Hooker-Feldman did not bar jurisdiction ever plaintiff 's claims because the district court could (and did) find that the claims had merit without also finding that the state court had erred); cf. Ivy Club v. Edwards, 943 F.2d 270, 284 (3d Cir. 1991) (holding that Rooker-Feldman did not bar jurisdiction where plaintiff had reserved its federal claim under England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964), on appeal to the state court from an agency's decision)

Yet the City argues, and the District Court agreed, that Rooker-Feldman barred the District Court from hearing Parkview's claims in this case even though the state court's adjudication was limited to on-the-record review of the Board's decisions. Relying on a footnote in Feldman and on language from this court's decision in Valenti v. Mitchell, 962 F.2d 280 (3d Cir. 1992), the District Court stated that "Rooker-Feldman applies not only to claims which were actually brought before the state court, but also to claims which could have been raised in that forum." Parkview Assocs. Partnership v. City of Lebanon, No. 98-0455, slip op. at 10 (M.D. Pa. Sept., 8, 1999). At argument, the City relied on language from our decision in Guarino v. Larsen, 11 F.3d 1151 (3d Cir. 1993), as additional support for this position.

The City's argument, however, fails to appreciate the distinction between Parkview's situation and that to which the footnote in Feldman was directed. Because the state

courts did not consider or rule upon Parkview's discrimination claim, the only basis to hold Hooker-Feldman applicable would be if Parkview's challenge to the Board's decisions were inextricably intertwined with the state courts' appellate review of those decisions. It is not.

In Feldman, the Court held that any challenges brought by Feldman or Hickey to the denial by the District of Columbia Court of Appeals of their requested waivers of the rule requiring attendance at an ABA accredited law school for admission to take the bar examination were inextricably intertwined with that court's adjudication. See Feldman, 460 U.S. at 486-87. In a. footnote, the Court expressly rejected the position taken by the Court of Appeals for the Fifth circuit in Dasher v. Supreme Court of Texas, 658 F.2d 1045 (5th Cir. 1981), that "a federal district court has jurisdiction Over constitutional claims asserted by a plaintiff who has been denied admission to a state bar in a state-court judicial proceeding if he failed to raise his constitutional claims in the state court." Feldman, 460 U.S. at 483 n.16. The Court explained that the district court under those circumstances would lack jurisdiction even over the claims that had not been raised in the state court proceedings if those claims were "inextricably intertwined" with the state court's adjudication. It stated:

> If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff 's application for admission to the state bar, then the district court is In essence being called upon to review the state-court decision. This the district court may not do.
>
> Moreover, the fact that we may not have jurisdiction to review a final state-court judgment because of a petitioner's failure to raise his constitutional claims in state court does not mean that a United States district

> court should have jurisdiction over the claims. By failing to raise his claims in state court a plaintiff may forfeit his right:, to obtain review of the state court decision in any federal court.

Id. at 483-84 n.16.

The Feldman footnote thus picks up on a point made in the text and makes clear that if a plaintiff's claims in federal court are inextricably intertwined with a previous state court adjudication; the district court lacks jurisdiction over those claims even if they were not raised in the state court. The footnote does not, as the City would have us believe, stand for the much broader proposition that Rooker-Feldman precludes, lower federal court jurisdiction over all claims that could have been raised in a previous state court proceeding. Such a reading would be inconsistent with the Court's other holding in Feldman that the district court did have jurisdiction over the general challenge to the constitutionality of the rule. The Court approvingly referred to lower court decisions recognizing "[t]he difference between seeking review in a federal district court of a state court's:' final judgment in a bar admission matter [which was barred'] and challenging the validity of a state bar admission rule' [which was not]." Id. at 483-84. If the district court is "simply be[ing] asked to assess the validity of a rule promulgated in a nonjudicial proceeding . . . the district court: is not reviewing a state court judicial decision." Id. at 486.

Because the Supreme Court held that the claim of Feldman and Hickey that the admission rule was unconstitutional was not:, barred by the earlier state court adjudication, the district court had jurisdiction over that claim and the matter was: remanded to it. The obvious lesson is that the mere fact that the plaintiffs could have brought their constitutional challenge in state court did net automatically trigger the Rooker-Feldman jurisdictional bar.

We applied Feldman in Guarino v. Larsen, .11 F.3d 1159. Judge Angelo Guarino, a senior judge of the Pennsylvania

state judiciary, sought to challenge in federal court the Pennsylvania Supreme Court's revocation of his judicial assignment, contending that the order deprived him of his liberty and property. Before the revocation was made permanent, the Pennsylvania Supreme Court issued a rule to show cause on Judge Guarino why the order should not remain in effect. Judge Guarino did not respond and the Court then affirmed its earlier order, reasoning that the temporary assignment of a retired judge is within its discretion and may be revoked by it. See id. at 1155. When Judge Guarino sought to raise constitutional challenges to the state court's decision in federal court, we held that the district court had no jurisdiction even though Judge Guarino had not raised those challenges in the state court. In doing so, we stated that "a litigant must present all of his or her claims arising from the same transaction in order to avoid waiving those claims he or she does not raise." Id. at 1161 n.7.

The underlying premise to our statement, however, was that Judge Guarino's challenges were inextricably intertwined with the state court adjudication. This was evident because Judge Guarino sought to challenge as unconstitutional the very decision of the Pennsylvania Supreme Court revoking his judicial assignment. It followed that all of Judge Guarino's federal claims, even if they had not been raised in the state court proceeding or, as we explained there, even if they were "not inextricably tied to the state law issues explicitly decided by the Pennsylvania Supreme Court," id. at 1160, were inextricably intertwined with the state court's adjudication. Therefore, we held that they were barred in the lower federal courts under Rooker-Feldman.

The year before, we were presented in Valenti with another Rooker-Feldman issue in an emergency appeal taken in the hurried context of an impending primary election. As a result of a required and contested reapportionment, the Pennsylvania Supreme Court revised the election calendar. Candidates and representatives for prospective candidates brought suit In district court alleging that the state court-imposed deadline forfiling nominating petitions to the state

primary election violated their rights to equal protection and free speech guaranteed by the United States Constitution. See Valenti, 962 F.2d at 296. However, those same parties had previously petitioned for relief in the state supreme court from the 'court—imposed filing deadline on the ground that the deadline violated their rights to equal protection, a claim that had been rejected by the state court. Stating that the plaintiffs could not "be allowed to escape' Rooker-Feldman by raising a new constitutional theory in federal court," we held that their free speech as well as their equal protection claim could not be brought in federal court. Id. Notably, in the next sentence, the opinion shifted its rationale from Rooker-Feldman to preclusion, stating: "Under principles of claim preclusion, they had a full and fair opportunity to litigate their first amendment claim in the state court, and here they merely seek a second bite at the apple." Id. (emphasis added). But, as with Guarino, that discussion came only after it was determined that the First Amendment claim in federal court was inextricably intertwined with the state court adjudication. See id. (citing Feldman, 460 U.S. at 482 n.16)

Our holding here that Hooker-Feldman does not bar jurisdiction in the District Court over Parkview's claims recognizes that the Rooker-Feldman doctrine is distinct from the affirmative defenses of preclusion.[2] In Feldman, the supreme Court sub silentio acknowledged the difference between the doctrines when, after directing remand of plaintiffs' general constitutional challenges, it expressly refrained from considering res judicata, leaving that question to the district court. See 460 U.S. at 487-88. Although occasionally the doctrines may overlap and even be blurred, they are not coextensive. As the Seventh Circuit has explained:

> Equating the Rooker-Feldman doctrine with preclusion is natural; both sets of principles define the respect one court owes to an earlier judgment.. But the two are not coextensive. Preclusion in federal litigation following a

> judgment in state court depends on the Full Faith and Credit Statute, 28 U.S.C. S 1738, which requires the federal court to give the judgment the same effect as the rendering state would. When the state judgment would not preclude litigation in state court of an issue that turns out to be important to a federal case, the" federal court may proceed; otherwise not. The Hooker-Feldman doctrine, by contrast, has nothing to do with S 1738. It rests on the principle that district courts have only original jurisdiction; the full appellate jurisdiction over judgments of state courts in civil cases lies in the Supreme Court of the United States, and parties have only a short time to invoke that jurisdiction.

GASH Assocs. v. Village of Rosemont, 995 F.2d 726, 728 (7th Cir. 1993) (citations omitted).

This distinction between Rooker-Feldman and preclusion is important because Rooker-Feldman, as a jurisdictional doctrine, must override preclusion doctrines where it applies. Were we to hold: that Rooker-Feldman was simply a jurisdictional version of claim preclusion, we would run afoul of the Supreme Court's directive that state law rather than federal law determines whether a claim brought in federal court is precluded by a prior state court adjudication. See Kremer v. Chemical Constr. Corp., 456 U.S. 461, 481-82 (1982) (holding that a federal court presented with a Title VII case should apply state preclusion law when the plaintiff had previously obtained in state court on-the-record review of a state agency's decision on the plaintiff 's discrimination claim).

Our decision is in line with the opinion of the Court of Appeals for the Seventh Circuit, the only other court of appeals to have faced this precise issue. In Centres, Inc. v. Town of Brookfield, Wis., 148 F.3d 699, 703 (7th Cir. 1998), the court held Rooker-Feldman did not bar a suit brought in

federal court alleging that a local zoning board decision denying a permit violated due process rights, even though the plaintiff In federal, court had appealed the zoning board decision to state court for on-the-record review. According to the court, the doctrine of claim preclusion, not Rooker-Feldman, provided the proper framework for considering whether the plaintiff had waived its claims by appealing the agency's decision to the state court.

IV.

We thus hold that Rooker-Feldman does not bar the District Court's jurisdiction over the claims brought by Parkview in this case. In so holding, we do not intimate any view of the merits of Parkview's case or whether preclusion doctrine is applicable. The City raised a series of challenges to the complaint, but because the District Court held there was no jurisdiction, it did not reach any other issue. On remand, it will undoubtedly turn to other issues. We will reverse the order of the: District Court dismissing for lack of jurisdiction and will remand for further proceedings not inconsistent with this opinion.

A True Copy:
Teste:

Clerk of the United States Court of Appeals for the Third Circuit

Footnotes

[1] The agreement was actually assigned to Parkview by one of its principals.

[2] Issue preclusion, otherwise known as collateral estoppel, bars relitigation of an issue identical to that in a prior action. Claim preclusion, otherwise known as res judicata, prohibits reexamination not only of matters actually decided, In the prior case, but also those that the parties might have, but did not, assert in that action. See Bradley v. Pittsburgh Bd. of

Educ., 913 F.2d 1064, 1070 (3d Cir. 1990). We take no position on whether Parkview's claims might be barred under these doctrines.